

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Evan Pennell et al.	Art Unit :	3724
Serial No. :	10/798,864	Examiner :	Stephen Choi
Filed :	March 11, 2004	Conf. No. :	6604
Title :	SHAVING RAZORS AND OTHER HAIR CUTTING ASSEMBLIES		

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDED BRIEF ON APPEAL

This Amended Brief on Appeal is in response to the Notification of Non-Compliant Appeal Brief mailed on April 18, 2008. The Status of the Claims and the Grounds of Rejection to be Reviewed on Appeal sections have been revised to include the correct set of claims for each rejection. Furthermore, the Appendix of Claims has been revised to remove all of the withdrawn pending claims. Appellants believe that this Appeal Brief is now in compliance. This Amended Appeal Brief is submitted pursuant to the Notice of Appeal filed in the U.S. Patent and Trademark Office on November 16, 2007, and in support of the appeal from the Final Rejection set forth in the Office Action mailed on October 4, 2007.

(1) Real Party in Interest

The real party in interest is The Gillette Company, Prudential Tower Building, Boston, Massachusetts. The Gillette Company is owned by The Procter & Gamble Company.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1-8 and 12-36 are pending. Claims 2, 4, 6, 14-23, 25, 26, and 34 have been withdrawn. Claims 9-11 have been canceled. Claims 1, 3, 5, 7, 8, 12, 13, 24, 27-33, 35, and 36 stand rejected and are appealed herein.

Claims 35 and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Brown, Jr., U.S. Patent Application Publication No. 2004/0055156 ("Brown"). Claims 1, 3, 5, 12, 13,

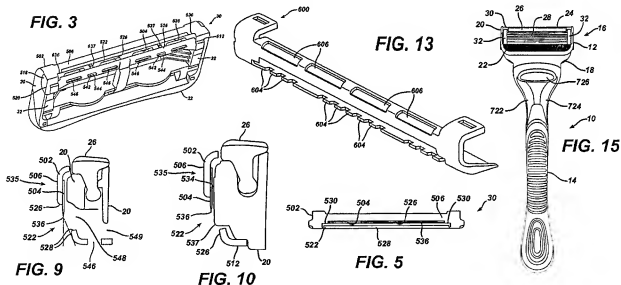
24, 27-29, 32, 33, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rozenkranc, U.S. Patent No. 6,276,061 ("Rozenkranc"). Claims 1, 3, 5, 12, 13, 24, 27-30, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown. Claims 1, 3, 5, 7, 8, 12, 13, 24, 27-33, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rozenkranc in view of "Applicant's Admitted Prior Art (hereafter AAPA)." Claims 7, 8, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown "in view of AAPA."

(4) Status of Amendments

All amendments have been entered.

(5) Summary of Claimed Subject Matter

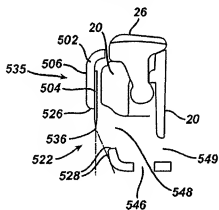
The claims relate to a shaving blade unit having an assembly that includes a blade carrier (e.g., ref. nos. 502 and 600) and a trimming blade (e.g., ref. nos. 504) mounted on that blade carrier. Of the pending claims, claims 1, 3, 35, and 36 are in independent form. Examples of the claim features are shown in Figs. 3, 5, 9, 10, and 13, reproduced below.



Independent claims 35 and 1 recite a shaving razor blade unit (e.g., ref. no. 30) including a housing (e.g., ref. no. 20) and an assembly including a blade carrier (e.g., ref. nos. 502 and 600)

and a trimming blade (e.g., ref. nos. 504) mounted on that blade carrier. See e.g., specification, paragraph 27. The housing (e.g., 20) has a primary guard (e.g., ref. no. 22) at a front of said housing and a primary cap (e.g., ref. no. 24) at an upper surface at a back of said housing. See e.g., specification, paragraph 26. One or more primary shaving blades are positioned between said primary guard and said primary cap. See e.g., specification, paragraph 26; Fig. 15. The blade carrier (e.g., ref. nos. 502 and 600) defines a rear wall (e.g., ref. no. 506) has a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface (e.g., ref. no. 526). See e.g., specification, paragraphs 4 and 29; Figs. 9 and 10. The trimming blade (e.g., ref. nos. 504) is mounted on said rear wall (e.g., ref. no. 506) such that a trimming cutting edge (e.g., ref. no. 536) extends at least partially beyond said terminating surface (e.g., ref. no. 526) inside of an imaginary extension of said rear exterior surface. See e.g., specification, paragraphs 4 and 29; Figs. 9 and 10. The rear exterior surface defines a trimming cap for the trimming blade. See e.g., specification, paragraph 30. The rear exterior surface extends along substantially the entire length of the trimming blade. See e.g., specification, Figs. 4-10.

FIG. 9

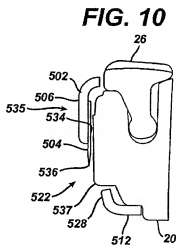
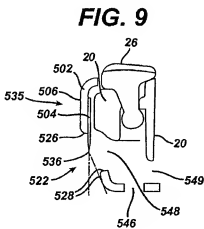


An example of such a construction is shown in Fig. 9, reproduced above, in which the cutting edge 536 of blade 504 extends at least partially beyond a terminating surface 526 of rear wall 506 and is inside of an imaginary extension of rear exterior surface 506 of the rear wall, such that rear exterior surface 506 defines a trimming cap 535 for the blade. This arrangement

avoids cutting of the user's skin during handling of the cartridge and razor, as discussed in paragraph 30 of the specification.

Furthermore, independent claim 1 further specifies that the housing (e.g., ref. no. 20) is made of plastic, that the assembly is mounted on said housing, and that the blade carrier (e.g., ref. no. 502 and 600) is formed from sheet metal. See e.g., specification, paragraph 27; original claim 11.

Independent claims 36 and 3 recite a shaving razor blade unit (e.g., ref. no. 30) including a housing (e.g., ref. no. 20) and a trimming assembly attached, as one unitary piece, to the back of the housing. See e.g. specification, paragraph 6. The housing (e.g., 20) has a primary guard (e.g., ref. no. 22) at a front of said housing and a primary cap (e.g., ref. no. 24) at an upper surface at the back of said housing. See e.g., specification, paragraph 26. One or more primary shaving blades are positioned between said primary guard and said primary cap. See e.g., specification, paragraph 26; Fig. 15. The trimming assembly includes a blade carrier (e.g., ref. nos. 502 and 600) and a trimming blade (e.g., ref. nos. 504) mounted on the blade carrier. See e.g., specification, paragraph 27. The trimming blade has a trimming cutting edge (e.g., ref. no. 536). See e.g., specification, paragraph 27. The trimming assembly also includes a trimming guard (e.g., ref. no. 528) in a predetermined position with respect to said trimming cutting edge to define a trimming blade span (e.g., ref. no. 522) and a trimming blade angle. See e.g., specification, paragraphs 6, 29, and 30; Figs. 9 and 10.



An example of such a trimming assembly is shown in Figs. 9 and 10, reproduced above. Trimming blade 504 is welded to the rear wall 506 of blade carrier 502, while trimming guard 528 extends from lower wall 512 of the blade carrier. Thus, the cutting edge 536 of the trimming blade is held in a precise, predetermined position with respect to the trimming guard, as discussed in the specification in paragraphs 29 and 30. Including a trimming blade and a trimming guard on a common assembly that is attached to a housing of a shaving razor blade unit facilitates accurate positioning of the trimming guard with respect to the trimming blade to provide accurate trimming blade tangent angle and trimming blade span. See e.g., specification, paragraph 30.

Furthermore, independent claim 3 further specifies that the housing (e.g., ref. no. 20) is made of plastic and that the blade carrier (e.g., ref. no. 502 and 600) is formed from sheet metal. See e.g., specification, paragraph 27; Original claim 11.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 35 and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Brown. Claims 1, 3, 5, 12, 13, 24, 27-29, 32, 33, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rozenkranc. Claims 1, 3, 5, 12, 13, 24, 27-30, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown. Claims 1, 3, 5, 7, 8, 12, 13, 24, 27-33, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rozenkranc in view of "Applicant's Admitted Prior Art (hereafter AAPA)." Claims 7, 8, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown "in view of AAPA."

(7) Argument

A. Claims 1, 3, 5, 12, 13, 24, 27-29, 32, 33, 35 And 36 Are Patentable Over Rozenkranc.

Claims 1, 3, 5, 12-13, 24, 27-29, 32, 33, 35, and 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Rozenkranc. Applicants will address this rejection as it applies to each of the independent claims 1, 3, 35, and 36, in turn.

i. The rejection of independent claim 35 over Rozenkranc is improper.

As discussed above, claim 35 requires the shaving razor blade unit to include a housing and a distinct assembly, which includes a blade carrier and a trimming blade. The blade carrier

defines "a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface." The trimming blade is "mounted on said rear wall and [has] a trimming cutting edge extending at least partially beyond said terminating surface *inside of an imaginary extension of said rear exterior surface*." (Emphasis added). Furthermore, the rear exterior surface defines "a trimming cap for said trimming blade." An example of such a construction is shown in Fig. 9, reproduced below, in which the cutting edge 536 of blade 504 extends at least partially beyond a terminating surface 526 of rear wall 506 and is inside of an imaginary extension of rear exterior surface 506 of the rear wall, such that rear exterior surface 506 defines a trimming cap 535 for the blade. This arrangement avoids cutting of the user's skin during handling of the cartridge and razor, as discussed at p. 6, lines 18-20 of Applicant's specification.

FIG. 9
 of Instant Application

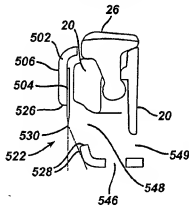
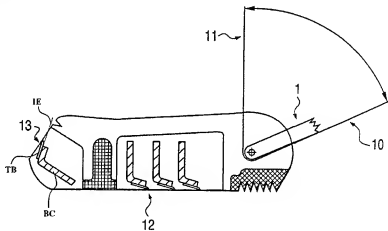


FIG. 4 of Rozenkranc



Rozenkranc does not provide any enabling teaching or suggestion of such an arrangement. There is no indication that the cutting edge of the trimming blade is inside of an imaginary extension of a terminating surface of the rear wall. To the contrary, all of the figures of Rozenkranc depict an arrangement where the trimming blade TB is mounted on an exterior surface of a blade support member BC such that the cutting edge of the trimming blade TB is outside of an imaginary extension of a rear exterior surface of the blade support member BC of Rozenkranc, as shown the modified version of Fig. 4 of Rozenkranc reproduced above. Accordingly, Rozenkranc cannot anticipate or render obvious claim 35.

During prosecution, however, the examiner made a non-standard and improper interpretation of Rozenkranc, as shown in Fig. A from the Office Action mailed 2/6/2006, reproduced below. As shown, the Examiner has interpreted a portion of the housing of Rozenkranc to define the claimed rear exterior surface. Claim 35, however, requires that the housing be distinct from the claimed assembly and that the assembly include a blade carrier that defines a rear wall having the claimed rear exterior surface. Therefore, it appears that the Examiner is arguing that part of the housing is the blade carrier, rather than the structure labeled as BC in Fig. 4 of Rozenkranc (as labeled by Appellants for purposes of explanation). This interpretation is improper because claim 35 requires a distinct assembly that includes the blade carrier as a structure separate from the housing. Furthermore, this interpretation does not result in a "blade carrier" (according to the Examiner, the top of the housing 2 of Rozenkranc) that meets all of the other claim requirements, as discussed below. Accordingly, the rejection is improper and should be withdrawn.

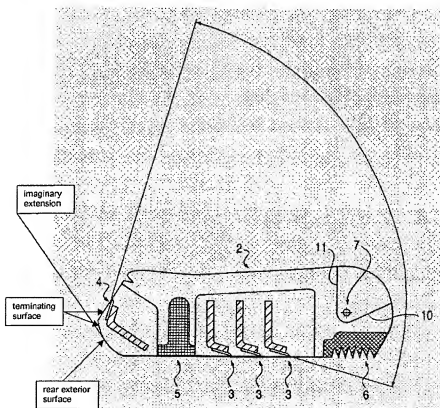


Figure A

The top of the housing 2 of Rozenkranc does not define a rear wall, nor has the Examiner indicated how the Examiner is interpreting the top of the housing 2 of Rozenkranc to have the claimed rear wall. Furthermore, Rozenkranc does not disclose the mounting of the trimming blade TB on any part of the top of the housing 2 of Rozenkranc, but instead discloses the mounting of the trimming blade TB on the blade support structure BC. As discussed above, claim 35 requires that the blade carrier define the rear wall having the rear exterior surface and that the trimming blade be mounted on the rear wall. Furthermore, Rozenkranc does not even disclose how trimmer 13 (including the trimming blade TB and the blade support structure BC) of Rozenkranc is secured on the housing of Rozenkranc. Accordingly, the Examiner's interpretation of the top portion of the housing of Rozenkranc to be the blade carrier does not allow for the trimming blade TB of Rozenkranc to be mounted on a rear wall of housing of Rozenkranc. Accordingly, the rejection of claim 35 over Rozenkranc is improper and must be withdrawn.

Furthermore, the housing of Rozenkranc does not include a rear exterior surface, as recited in claim 35, that extends along substantially the entire length of the trimming blade. The cross-hatching (and lack of cross-hatching) in Rozenkranc's Figure 1 (the Examiner's Figure A) indicates that the portion of the housing labeled by the Examiner as "rear exterior surface" does not extend along the blade at the point at which the cross-section was taken (the area indicated by the Examiner is not cross-hatched, and thus the indicated housing material is not adjacent to the blade at the point in the cartridge where the cross-section is taken but instead is somewhere further along the length of the blade going into the paper).

The rejection is further improper because the Examiner has not presented any reason why one having ordinary skill in the art would have modified the device of Rozenkranc in a way that would actually result in a modified device that meets all of the claim requirements of independent claim 35. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For example, the Examiner has not presented a reason why one having ordinary skill in the art would mount the trimming blade TB of Rozenkranc to the top of the housing of Rozenkranc, which the

Examiner has interpreted to be the blade carrier, as opposed to mounting the trimming blade TB to the blade support structure BC already shown by Rozenkranc. Nor has the Examiner presented any reason why one having ordinary skill in the art would have modified the top portion of the housing of Rozenkranc to be a separate structure from the remainder of the housing of Rozenkranc. Nor has the Examiner presented any reason why Rozenkranc would have a rear wall defined by the top portion of the housing. Because the Examiner has not presented any reason for any of these modifications of Rozenkranc, the Examiner has failed to present a *prima facie* case of obviousness. Accordingly, the rejection is improper and must be withdrawn.

ii. The rejection of independent claim 1 over Rozenkranc is improper.

The rejection of independent claim 1 is improper for the same reasons as discussed above with regard to claim 35. Claim 1 includes the same limitations discussed above with regard to claim 35 and further recites "wherein said housing is made of plastic, said assembly is mounted on said housing, and said blade carrier is formed from sheet metal." Although Rozenkranc does indicate that the blade support structure BC is separate from the housing of Rozenkranc, the Examiner has interpreted the top portion of the housing of Rozenkranc to be the claimed blade carrier. To reject claim 1, the Examiner asserts that it would have been obvious to modify the top portion of the housing of Rozenkranc to make it of sheet metal and to have the remainder of the housing still be plastic. The Examiner, however, does not provide any reason why a person having ordinary skill in the art would actually make this modification. Accordingly, the Examiner has not presented a *prima facie* case of obviousness.

"The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." MPEP § 2142. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 337 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); MPEP § 2142.

The Examiner asserts that “it would have been obvious matter of design choice to a person of ordinary skill in the art to provide a separate assembly including a blade carrier [the top portion of the housing] made of sheet metal instead of an integral structure made of the same material because applicant has not disclosed the separate assembly including a blade carrier made of sheet metal provides an advantage, is used for particular purpose, or solves a stated problem.” Office Action mailed 10/4/2007, page 5. There is no basis for asserting that a claim is obvious “because applicant has not disclosed [that the feature] provides an advantage, is used for a particular purpose, or solves a stated problem.” The failure to present an advantage, particular purpose, or solution to a stated problem is not a reason for why one having ordinary skill would find the claimed arrangement obvious. The rejection is improper because the Examiner has not satisfied the burden of presenting a *prima facie* case of obviousness. Furthermore, Appellants have already pointed out that the claimed arrangement avoids cutting of the user's skin during handling of the cartridge and razor, as discussed in paragraph 30 of the instant specification.

The Examiner goes on to assert that one having “ordinary skill in the art would have expected Rozenkranc's arrangement and applicant's invention, to perform equally well with either arrangement since both arrangements would have performed the same function.” Office Action mailed 10/4/2007, page 5. There is no support for this statement, which seems to be improperly predicated on the artisan having had Appellants' disclosure before him. One having ordinary skill would have had no knowledge of the “applicant's invention” at the time of invention because it is the applicant's invention. Accordingly, one having ordinary skill in the art at the time of invention would not have been able to compare Rozenkranc's arrangement and the applicant's invention. This statement by the Examiner is, again, not a reason why one having ordinary skill in the art would have found the modification of the device of Rozenkranc obvious, and is thus also irrelevant to the patentability of claim 1.

The Examiner also asserts that “[i]t has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice,” citing *In re Leshin*, 125 USPQ 416. (Office Action mailed 10/4/07, page 4.) Again, the Examiner's statement is irrelevant. The Examiner is not merely modifying the Rozenkranc device by making a sheet-like and already distinct portion out of sheet

metal (such as blade support structure BC). Instead, the Examiner is proposing modifying just a top portion of the Rozenkranc housing, which portion is integral with the housing as a whole, to be separate and to be made of sheet metal and then for that modified portion to serve as a blade carrier. Furthermore, the Examiner has not presented any evidence that sheet metal is suitable for the use of a top portion of a housing where the remainder of the housing is made of plastic. There is no reason why one having ordinary skill in the art would modify the Rozenkranc device to have a main part of the housing made of plastic but the top portion of the housing made of sheet metal. Accordingly, this statement also fails to present a *prima facie* case of obviousness.

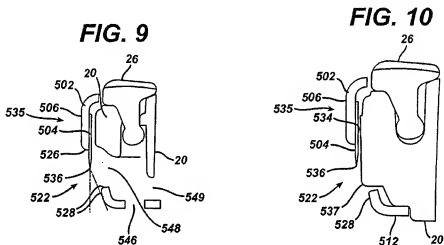
The Examiner also states that "it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art." (Office Action mailed 10/4/07, page 3.) This is true for integral structures where one having ordinary skill in the art would appreciate a reason for dividing the structure up into separate element, but such is not the case in regard to Rozenkranc. Furthermore, this does not alleviate the Examiner of his duty of articulating a reason for why one having ordinary skill in the art would make the asserted modification. The Examiner simply has not presented even a single reason for why one having ordinary skill in the art would arbitrarily divide the housing of Rozenkranc and make the top portion out of sheet metal and the remainder out of plastic. Doing so would simply only seem to complicate the construction and assembly of the Rozenkranc housing. Accordingly, this statement also fails to present a *prima facie* case of obviousness.

Because Rozenkranc does not disclose a razor blade unit that includes all of the claimed features and because the Examiner has failed to present a *prima facie* case of why one having ordinary skill at the time of invention would have found a razor blade unit having all of the claimed features to be obvious, the rejection of claim 1 over Rozenkranc is in error and must be withdrawn. Accordingly, Appellants request that the instant rejection of claim 1 be withdrawn.

iii. The rejection of independent claim 36 over Rozenkranc is improper.

The rejection of independent claim 36 is also improper. Independent claims 3 and 36 both require "a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle." The

trimming assembly includes (a) a trimming blade having a trimming cutting edge and (b) a trimming guard in a predetermined position with respect to the trimming cutting edge to define a trimming blade span and a trimming blade angle. An example of such a trimming assembly is shown in Figs. 9 and 10, reproduced below.



Trimming blade 504 is welded to the rear wall 506 of blade carrier 502, while trimming guard 528 extends from lower wall 512 of the blade carrier. Thus, the cutting edge 536 of the trimming blade is held in a precise, predetermined position with respect to the trimming guard, as discussed in Applicants' specification at page 5, lines 21-25. Including a trimming blade and a trimming guard on a common assembly that is attached to a housing of a shaving razor blade unit facilitates accurate positioning of the trimming guard with respect to the trimming blade to provide accurate trimming blade tangent angle and trimming blade span. (Applicants' Specification, p. 6, lines 20-23.)

Rozenkranc does not include a trimming assembly as recited in claim 36, which includes a trimming blade and a trimming guard as a unitary piece attached to the housing. As shown in the Fig. 4 of Rozenkranc, the trimmer 13 of Rozenkranc includes a trimming blade TB and a blade support structure BC, but does not include any structure that could reasonably be construed to be a trimming guard.

It appears, however, that the Examiner is again alleging that a portion of the top of the housing 2 of Rozenkranc constitutes the trimming guard. The top of the housing of Rozenkranc

cannot properly be construed to be a portion of the claimed trimming assembly that, as a unitary piece, is attached to the housing. The unitary nature of the trimming assembly claimed in claims 3 and 36 facilitates accurate positioning of the trimming guard with respect to the trimming blade to provide accurate trimming blade tangent angle and trimming blade span. Rozenkranc discloses a blade support structure BC that does not include anything that could reasonably be construed to be a trimming guard. Furthermore, even if a portion of the housing of Rozenkranc could be construed to act as a trimming guard, the arrangement of Rozenkranc does not facilitate the accurate positioning of the trimming blade with respect to this portion of the housing in the same way that the claimed arrangement would. Furthermore, there is no recognition whatsoever in Rozenkranc that accurate relative positioning could be obtained by attaching the trimming blade and trimming guard to the housing as a common assembly. Because Rozenkranc does not disclose a trimming guard that is part of a unitary trimming assembly, and the Examiner does not suggest any reason why the upper portion of the housing of Rozenkranc should be construed as a unitary structure with the blade support structure BC, Rozenkranc cannot anticipate or render obvious claims 36, 3, or the claims that depend there from.

iv. The rejection of independent claim 3 over Rozenkranc is improper.

Turning now to claim 3, claim 3 requires “a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle.”

As discussed above, Rozenkranc does not teach or remotely suggest a trimming assembly that is attached to the back of the housing. Nor does Rozenkranc disclose an assembly that includes a trimming blade and blade carrier. Accordingly, Rozenkranc simply cannot teach or suggest an assembly in which the trimming cutting edge of a trimming blade is in a predetermined position with respect to a trimming cutting guard that is also part of the assembly. As discussed in Applicants' specification at p. 3, lines 6-10, including the trimming blade and trimming guard on a common assembly that is attached to the housing facilitates accurate positioning of the trimming guard with respect to the trimming blade to provide accurate trimming blade tangent angle and trimming blade span. There is no recognition whatsoever in

Rozenkranc that accurate relative positioning could be obtained by attaching the trimming blade and trimming guard to the housing as a common assembly.

The rejection of independent claim 3 is improper for the same reasons discussed above with regard to claim 36. Claim 3 includes the same limitations discussed above with regard to claim 36 and, like claim 1, further recites "wherein said housing is formed of plastic and said blade carrier is formed of sheet metal." Although Rozenkranc does indicate that the blade support structure BC is separate from the housing of Rozenkranc, the Examiner has also interpreted the top portion of the housing of Rozenkranc to be the claimed trimming guard. To reject claim 3, the Examiner asserts that it would have been obvious to modify the top portion of the housing of Rozenkranc to make it of sheet metal and to have the remainder of the housing still be plastic. As discussed above in regard to claim 1, the Examiner does not provide any reason why a person having ordinary skill in the art would actually make this modification. Accordingly, the Examiner has not presented a *prima facie* case of obviousness and the rejection must be withdrawn.

B. Claims 1, 3, 5, 7-8, 12, 13, 24, 27-33, 35 And 36 Are Patentable Over Rozenkranc In View of "Applicant's Admitted Prior Art (hereafter AAPA)."

Claims 1, 3, 5, 7-8, 12, 13, 24, 27-33, 35 and 36 stand further rejected under 35 U.S.C. § 103(a) as being unpatentable over Rozenkranc in view of alleged admitted prior art. This rejection is in error for the same reasons given above. The Examiner makes the additional argument that "providing a rear exterior surface extending along substantially the entire length of

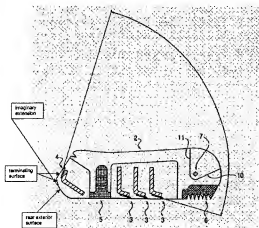
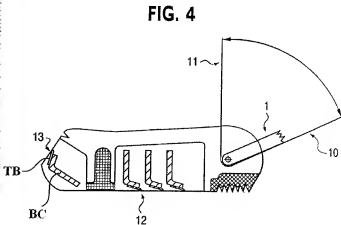


Figure A



a place or blades [is] old and well known in the art for the purpose of providing a blade supporting body.” Although Appellants have never admitted this to be true, it is quite irrelevant. As shown in Fig. 4 of Rozenkranc, reproduced above, Rozenkranc already discloses a blade support structure as part of trimmer 13.

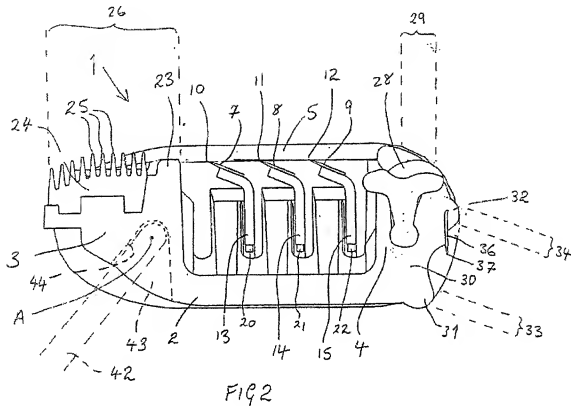
But as discussed above and as shown in Fig. A of the Office Action mailed 2/6/2006, reproduced above, the Examiner is not alleging that the blade support structure BC is the claimed blade carrier that defines the rear wall having the rear exterior surface. Instead, the Examiner is alleging that the rear exterior surface is defined by a top portion of the housing of Rozenkranc. Assuming, *arguendo*, that it would have been obvious for one having ordinary skill in the art to have the blade support structure BC of the trimmer 13 of Rozenkranc to extend along substantially the entire length of the blade, to provide a blade support along the entire length of the trimming blade, nonetheless one having ordinary skill in the art at the time of invention would not have found it obvious to make the modification asserted by the Examiner because the top portion of the housing of Rozenkranc is not used to support the blade. The Examiner's misconstruction of the top portion of the housing of Rozenkranc to be the claimed “blade carrier” does not change the fact that the top portion of the housing of Rozenkranc does not support the trimming blade. One having ordinary skill in the art, regardless of the alleged “admitted prior art”, would not have found any reason to modify the top portion of the housing of Rozenkranc to have this top portion extend along substantially the entire length of the blades. Accordingly, the rejection must be withdrawn because the Examiner has failed to present a *prima facie* case of obviousness.

C. Claims 35 And 36 Are Not Anticipated By Brown.

Claims 35 and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Brown. Independent claims 35 and 36 will be addressed in turn.

i. **The rejection of independent claim 35 over Brown is improper.**

With regard to claim 35, Brown does not disclose “a blade carrier defining a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface, and a trimming blade mounted on said rear wall.” As shown in Fig. 2 of Brown, reproduced below, Brown instead discloses a second blade 36 attached directly to the housing, as opposed to being mounted on a blade carrier.



In the Office Action mailed October 4, 2007, the Examiner alleges that reference no. 4 of Fig. 2 constitutes “a blade carrier (e.g., at 4) defining a rear wall having a rear exterior surface extending downward to a terminating surface and . . . defining a trim cap (e.g., 34).” Office Action mailed 10/4/2007, page 2. The structure of reference no. 4 of Brown, however, cannot properly be construed to be “a blade carrier defining a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface.” Instead, reference no. 4 is used to indicate a part of the molded plastic housing (paragraph [0016], first sentence), not a blade carrier. Because reference no. 4 of Brown labels the molded plastic housing of Brown, it cannot be said that Brown discloses a razor blade unit that includes both the claimed assembly, which includes the claimed blade carrier, and the claimed housing. Accordingly, the rejection is in error and must be withdrawn.

Furthermore, not one part of the Brown molded plastic (see e.g., Brown ref. no. 4) can be said to define the claimed “rear wall having a rear exterior surface” to which the trimming blade is mounted. The trimming blade 36 of Brown is instead embedded within the material forming

bar 32. Bar 32 does not define the claimed “rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface.” Because Brown does not show or disclose any spacing between bar 32 and the remainder of reference no. 4, besides the space inherently taken up by the trimming blade 36, bar 32 cannot be properly construed to define a wall of any type. Furthermore, the trimming blade 36 of Brown cannot be said to be “inside of an imaginary extension of said rear exterior surface” because Brown does not include any rear wall. Accordingly, the rejection is in error and should be withdrawn.

Appellants also point out that the rejection is in error because the Examiner has not fully addressed each claimed feature of the blade carrier and the trimming blade. The Examiner has not addressed the requirement that the blade carrier defines “a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface” and that the trimming blade extends “at least partially beyond said terminating surface inside of an imaginary extension of said rear exterior surface.”

ii. The rejection of independent claim 36 over Brown is improper.

With regard to claim 36, Brown does not disclose “a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle.” As discussed above, Brown does not disclose a blade carrier, but instead discloses a trimming blade embedded within a plastic portion of the housing 4 of Brown. Additionally, Brown does not disclose a trimming assembly that includes a trimming guard. Although Brown does disclose a second guard surface 33, this second guard surface is part of the rear frame member 4 of the housing, not a part of the assembly. Because claim 36 clearly requires a housing and a distinct trimming assembly that includes a blade carrier and a trimming guard as part of a unitary construction, the rejection is in error and must be withdrawn.

D. Claims 1, 3, 5, 12, 13, 24, 27-30, 32, and 33 Are Patentable Over Brown.

Claims 1, 3, 5, 12, 13, 24, 27-30, 32, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown. Independent claims 1 and 3 will be addressed in turn.

i. The rejection of independent claim 1 over Brown is improper.

The rejection of independent claim 1 is improper for the same reasons as discussed with regard to independent claim 35 above. One having ordinary skill in the art at the time of invention would not have found it obvious to modify Brown to include the claimed blade carrier and the Examiner has not set forth any reason why one having ordinary skill in the art would modify the razor blade unit of Brown to include a distinct assembly from the housing that includes the claimed blade carrier defining a rear wall. Accordingly, the rejection is in error for the same reasons as given above.

Claim 1, however, also recites "wherein said housing is made of plastic, said assembly is mounted on said housing, and said blade carrier is formed from sheet metal." Brown does not disclose a blade carrier, as discussed above, and accordingly also does not disclose a blade carrier formed from sheet metal. The Examiner, however, alleges that "it would have been [an] obvious matter of design choice for a person of ordinary skill in the art to provide the blade carrier made of sheet metal because applicant has not disclosed the blade carrier made of sheet metal provides an advantage, is used for [a] particular purpose, or solves a stated problem." Office Action mailed 10/4/2007, page 4. Appellants respectfully submit that these are not reasons why one having ordinary skill in the art would modify the device of Brown. As discussed above, there is no requirement that an applicant present how the claimed features provide an advantage, is used for a particular purpose, or solves a stated problem for the claim to be found nonobvious. The burden of proof is on the Examiner to present a *prima facie* case of obviousness. Because the Examiner has not presented a single reason why one having ordinary skill in the art would modify the device of Brown to arrive at the claimed device, the rejection has not presented a *prima facie* case of obviousness and must therefore be withdrawn.

Furthermore, Appellants have already pointed out that the claimed arrangement avoids the cutting of the user's skin during handling of the cartridge and razor, as discussed in paragraph 30 of the instant specification. Additionally, Appellants note that there is no reason why one having ordinary skill at the time of invention would find it obvious to modify just a portion of the rear frame member 4 of the housing of Brown to make it out of sheet metal, while making another portion of the housing of Brown out of plastic. One having ordinary skill in the art at the time of invention would not find sheet metal suitable for use as rear frame member 4 of

Brown because Brown shows the end of the razor blade 36 embedded within a portion of rear frame member 4. Modifying this arrangement to use sheet metal would involve a wholesale redesign of the trimming blade assembly of Brown. A “suggested combination of references [that] require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate” does not establish a prima facie case of obviousness. (In re Ratti, 270 F.2d at 813, see also MPEP § 2143.02(VI)). Accordingly, the rejection is in error and must be withdrawn.

ii. The rejection of independent claim 3 over Brown is improper.

The rejection of independent claim 3 is improper for the same reasons as discussed with regard to independent claim 36 above. Brown does not disclose “a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle.” Furthermore, one having ordinary skill in the art at the time of invention would not have found it obvious to modify Brown to include a housing and a distinct trimming assembly including a blade carrier and a trimming guard. The Examiner has not even set forth a reason why one having ordinary skill in the art would modify the razor blade unit of Brown to include a distinct trimming assembly from the housing. Accordingly, the rejection is in error for the same reasons as given above.

Claim 3, like claim 1, also recites “wherein said housing is made of plastic, said assembly is mounted on said housing, and said blade carrier is formed from sheet metal.” As discussed above with regard to claim 1, Brown does not render obvious the use of a blade carrier formed from sheet metal because Brown does not even disclose a blade carrier. Furthermore, the Examiner has not provided any reason why one having ordinary skill in the art at the time of invention would modify the Brown device to have a separate blade carrier or to make the blade carrier out of sheet metal. Accordingly, the rejection is in error and must be withdrawn.

E. Claims 7-8 and 31 Are Patentable Over Brown In View Of Applicant's Admitted Prior art ("AAPA.")

The Examiner further alleges that claims 7, 8, and 31 are obvious over Brown in view of applicant's admitted prior art ("AAPA"). The rejection of these claims is improper for the same reasons as discussed with regard to independent claims 1 and 3 above. Furthermore, Appellants note that they have never admitted, either in the application or at any time during prosecution, that any the features alleged to be AAPA were known in the prior art.

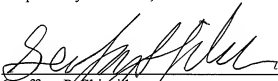
F. Conclusion

In light of the discussion above, Appellants request that the rejections of claims 1, 3, 5, 7, 8, 12, 13, 24, 27-33, 35, and 36 be reversed, and that these claims be promptly allowed. Additionally, Appellants request that withdrawn dependent claims 6, 15-17, and 34 be rejoined and allowed because they depend from an allowable generic claim.

We believe that the brief fee of \$510 has already been paid, but please apply any appropriate charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 00216-661001.

Respectfully submitted,

Date: 4/22/08



Geoffrey P. Shippides
Reg. No. 55,617

Fish & Richardson P.C.
60 South Sixth Street
Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

Appendix of Claims

1. A shaving razor blade unit comprising

a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap, and

an assembly comprising

a blade carrier defining a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface, and

a trimming blade mounted on said rear wall and having a trimming cutting edge extending at least partially beyond said terminating surface inside of an imaginary extension of said rear exterior surface, said rear exterior surface extending along substantially the entire length of the trimming blade and defining a trimming cap for said trimming blade,

wherein said housing is made of plastic, said assembly is mounted on said housing, and said blade carrier is formed from sheet metal.

3. A shaving razor blade unit comprising

a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap, and

a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle,

wherein said housing is formed of plastic and said blade carrier is formed of sheet metal.

5. The unit of claim 1 further comprising a trimming guard at the back of said housing, said trimming guard being located inside of said imaginary extension of said rear exterior surface.
7. The unit of claim 1 or 3 further comprising one or more skin protection structures between said trimming guard and said trimming cutting edge.
8. The unit of claim 1 or 3 further comprising two or more skin protection structures between said trimming guard and said trimming cutting edge.
12. The unit of claim 1 wherein said rear wall has an interior surface and said trimming blade is mounted on said interior surface.
13. The unit of claim 12 wherein said blade is welded to said interior surface.

- 24. The unit of claim 12 wherein said rear wall has alignment surfaces with which said cutting edge is aligned.
- 27. The unit of claim 1 wherein said trimming cap includes a strip providing a shaving aid.
- 28. The unit of claim 2 or 3 wherein said back of said housing includes a trimming cap including a strip providing a shaving aid.
- 29. The unit of claim 1, 2 or 3 wherein there are three or more said primary shaving blades.
- 30. The unit of claim 1, 2 or 3 wherein there are four or more said primary shaving blades.
- 31. The unit of claim 1, 2 or 3 wherein there are five or more said primary shaving blades.
- 32. The element of claim 5 or 6 wherein a primary distance between said primary guard and said primary cap, measured in a primary plane tangential thereto, is greater than the distance between said trimming guard and said trimming cap, measured in a trimming plane tangential thereto.
- 33. The unit of claim 3 wherein said trimming assembly includes a trimming cap, and wherein a primary distance between said primary guard and said primary cap, measured

in a primary plane tangential thereto, is greater than the distance between said trimming guard and said trimming cap, measured in a trimming plane tangential thereto.

35. A shaving razor blade unit comprising

a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap, and

an assembly comprising

a blade carrier defining a rear wall having a rear exterior surface extending downward from said upper surface at the back of said housing to a terminating surface, and

a trimming blade mounted on said rear wall and having a trimming cutting edge extending at least partially beyond said terminating surface inside of an imaginary extension of said rear exterior surface, said rear exterior surface extending along substantially the entire length of the trimming blade and defining a trimming cap for said trimming blade.

36. A shaving razor blade unit comprising

a housing having a primary guard at a front of said housing and a primary cap at an upper surface at a back of said housing, one or more primary shaving blades between said primary guard and said primary cap, and

a trimming assembly attached, as one unitary piece, to the back of said housing, said assembly including a blade carrier and, mounted on the blade carrier, a trimming blade having a trimming cutting edge and a trimming guard in a predetermined position with respect to said trimming cutting edge to define a trimming blade span and a trimming blade angle.

Applicant : Evan Pennell et al.
Serial No. : 10/798,864
Filed : March 11, 2004
Page : 26 of 27

Attorney's Docket No.: 00216-661001 / Case 8131/Z-
03364

Evidence Appendix

None

Applicant : Evan Pennell et al.
Serial No. : 10/798,864
Filed : March 11, 2004
Page : 27 of 27

Attorney's Docket No.: 00216-661001 / Case 8131/Z-
03364

Related Proceedings Appendix

None